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17 Attorneys for Plaintiffs  
18 CORY SPENCER, DIANA MILENA  
19 REED, and COASTAL PROTECTION  
20 RANGERS, INC.

21 **UNITED STATES DISTRICT COURT**  
22 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

23 CORY SPENCER, an individual;  
24 DIANA MILENA REED, an  
25 individual; and COASTAL  
26 PROTECTION RANGERS, INC., a  
27 California non-profit public benefit  
28 corporation,

Plaintiffs,

CASE NO. 2:16-cv-02129-SJO (RAOx)  
**DECLARATION OF MICHAEL  
SISSON IN SUPPORT OF  
PLAINTIFFS' MOTION FOR CLASS  
CERTIFICATION**

Judge: Hon. S. James Otero  
Date: February 21, 2017  
Time: 10:00 a.m.  
Crtrm.: 10C

1

v.

2  
3 LUNADA BAY BOYS; THE  
4 INDIVIDUAL MEMBERS OF THE  
5 LUNADA BAY BOYS, including but  
6 not limited to SANG LEE, BRANT  
7 BLAKEMAN, ALAN JOHNSTON  
8 AKA JALIAN JOHNSTON,  
9 MICHAEL RAE PAPAYANS,  
10 ANGELO FERRARA, FRANK  
11 FERRARA, CHARLIE FERRARA,  
12 and N. F.; CITY OF PALOS  
13 VERDES ESTATES; CHIEF OF  
14 POLICE JEFF KEPLEY, in his  
15 representative capacity; and DOES  
16 1-10,

17

Defendants.

18

19 I, MICHAEL SISSON, declare as follows:

20

21 1. Since 1955, I have resided the South Bay area in Southern  
22 California. I have lived in various places during that time, including Hermosa  
23 Beach, Torrance, and Redondo Beach, all in California. I currently live in  
24 Redondo Beach, California. I am licensed to practice law in the State of  
25 California and in the United States District Court for the Districts of Central  
and Southern California. My practice areas include civil litigation, civil rights,  
and personal injury. My office address is 3655 Torrance Blvd, 3rd Floor,  
Torrance, California 90503. I have personal knowledge of the matters  
stated in this declaration and, if called as a witness, could and would testify  
competently as to its contents.

26

27 2. I attended Bishop Montgomery High School in Torrance,  
28 California. I received my undergraduate degree from the University of  
California, Los Angeles (UCLA). I attended law school at the University of

1 West Los Angeles.

2       3. When I'm not working, my family and I enjoy exploring the  
3 beach, coastal areas, and other ocean-oriented destinations. I like going to  
4 these beach locations because I like being physically active and I love  
5 spending time outdoors. Though I do not surf regularly anymore, I visit the  
6 beach weekly and I am very active in the water.

7       4. I have been aware of the localism at Lunada Bay for decades.  
8 There is a group of local surfers from Palos Verdes Estates, nicknamed the  
9 "Bay Boys," who harass, threaten, and inflict violence on non-resident  
10 beachgoers. In the surfing community, the Bay Boys are well known.

11       5. I grew up surfing the Los Angeles area beaches but I never tried  
12 to surf at Lunada Bay. I avoided Lunada Bay because it was well  
13 understood in the surfing community that the localism was extreme there,  
14 and that it was a dangerous place where I could be attacked for being a non-  
15 local. In fact, when I was 14 years old, a friend of mine was beaten up by  
16 the Bay Boys.

17       6. As an adult, I encountered the Lunada Bay localism problems in  
18 my professional capacity as an attorney. First, in the early 1990s, one of my  
19 clients, Geoff Hagins, was attacked by the Bay Boys when he tried to surf  
20 Lunada Bay. A news crew filmed the incident. Mr. Hagins and four teenage  
21 boys with him, one of whom was his nephew, were pushed, shoved, and  
22 threatened for attempting to surf at Lunada Bay. On July 20, 1995, I brought  
23 suit on behalf of Mr. Hagins and the others seeking a gang injunction against  
24 the Bay Boys, and sued the City of Palos Verdes Estates for civil rights  
25 violations, in the Los Angeles Superior Court, Case No. BC131830.

26 Attached hereto as Exhibit "1" is a true and correct copy of the face sheet of  
27 said lawsuit. This matter settled with both the individual Bay Boys and the  
28 City, and with the City making a public proclamation that localism would not

1 be tolerated. Attached hereto as Exhibit "2" is a true and correct copy of an  
2 article I obtained from the December 1996 Edition of the Easy Reader  
3 discussing the case.

4       7. Then, in the early 2000s, my client, Tim Banas went to surf at  
5 Indicator, a beach located in Palos Verdes Estates north of Lunada Bay.  
6 He was a local painter and brought his 16-year-old son with him. Mr. Banas  
7 was attacked by several of the locals and thrown off of the stone patio the  
8 locals had built on the shoreline. When Mr. Banas hit the rocks, he injured  
9 his knee, requiring surgery to repair it. On or about February 25, 2002, on  
10 behalf of Mr. Banas, I sued Palos Verdes Estates and five local surfers  
11 seeking to enjoin these individuals from engaging in gang-like activity and  
12 from surfing Palos Verdes Estates surf breaks, including Haggerty's, the  
13 Cove, Indicator and Lunada Bay, in the Los Angeles Superior Court Case  
14 No. BC268737. A true and correct copy of said lawsuit is attached hereto as  
15 Exhibit "3". Like the lawsuit involving Mr. Hagins, this matter settled.

16       8. As a plaintiff's lawyer, I have observed several different people  
17 serve as Police Chief in the City of Palos Verdes Estates. In my role as a  
18 lawyer, I have had personal communications with several of them. They all  
19 essentially say the same thing: that they do not tolerate the Bay Boys'  
20 behavior and all claim to have the background and experience to remedy the  
21 Bay Boys harassment problem. However, their actions are different and it is  
22 my experience that there is never any follow-through by Palos Verdes  
23 Estates police to resolve this issue. In fact, I am aware that the Palos  
24 Verdes Estates' Police have a history of blaming the victim – this happened  
25 to more than one of my clients. Ultimately, it has been my experience that  
26 for decades the Palos Verdes Estates Police have a history of complicity in  
27 illegal exclusion of outsiders at Lunada bay and other Palos Verdes Estates'  
28 beaches.

1       9. Lunada Bay is one of the most beautiful surf spots in Southern  
2 California. And for Los Angeles County, the Palos Verdes Estates shoreline  
3 with rock reef formations, coves, bays, and bluffs that rise from the ocean  
4 seem quite rare. I have explored these public bluffs, shoreline, tide pools  
5 and water. I would like to spend more time at Lunada Bay and share  
6 experiences there with my family and friends, but I fear physical and verbal  
7 attack by the Bay Boys. These attacks are designed to intimidate me and  
8 others who don't live in Palos Verdes Estates.

9       10. I want the Bay Boys to be banned from visiting Lunada Bay until  
10 their attitudes toward non-resident beachgoers change and non-residents  
11 feel comfortable enough visiting the area. I want the City of Palos Verdes  
12 Estates to return this beach to the public by enforcing its ordinances and  
13 providing signage that clearly designates Lunada Bay as a public beach.  
14 And as I become older and less ambulatory, I hope at least a few Palos  
15 Verdes Estates beaches will be accessible to persons with disabilities. And  
16 importantly, I want the Palos Verdes Estates police to be available to help  
17 anyone who is unlawfully excluded at Lunada Bay and to take harassment  
18 complaints seriously by thoroughly investigating complaints and holding  
19 wrongdoers accountable.

20

21       I declare under penalty of perjury under the laws of the United States  
22 of America that the foregoing is true and correct.

23

24 2016.

25

26

27

28

Executed in Redondo Beach, California on December 21,

2016.

  
MICHAEL SISSON

# **EXHIBIT 1**

1 MICHAEL F. SISSON - State Bar #108855  
2 18411 Crenshaw Blvd., Suite 100  
3 Torrance, CA 90504  
(310) 719-8894

ORIGINAL FILED

JUL 20 1995

5 Attorney for plaintiffs

6  
7  
8 LOS ANGELES  
9 SUPERIOR COURT

10  
11 SUPERIOR COURT OF CALIFORNIA  
12 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

13 MICHAEL C. BERNARD, SR.; ) BC131830  
14 MICHAEL C. BERNARD, SR., on ) CASE NO.  
15 behalf OF MICHAEL C. BERNARD, ) COMPLAINT FOR DAMAGES  
16 JR., a minor; JOHN G. HAGINS, SR.; ) FOR:  
17 JOHN G. HAGINS, SR., on behalf of ) 1. CIVIL RIGHTS  
18 JOHN G. HAGINS, JR., a minor; ) VIOLATIONS;  
19 TAMARA S. RIGANO, on behalf of ) 2. ASSAULT;  
20 CHARLIE F. RIGANO, a minor; ) 3. CONSPIRACY;  
21 DAN DISANTI, on behalf of DOUGLAS ) 4. NEGLIGENCE; and  
22 DISANTI, a minor; ) 5. PERMANENT INJUNCTION  
23 )

17 Plaintiffs, )

18 vs. )

19 THE BAY BOYS; PETER MCCULLOM; )  
20 KELLY LOGAN; DAVID HILTON; )  
21 CHANG LEE; CITY OF PALOS VERDES )  
ESTATES; DOES 1 THROUGH 200, )  
INCLUSIVE, )

22 Defendants. )

23  
24  
25 ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

26 1. For the purposes of this action, John G. Hagins, Sr., was  
27 appointed by the above-entitled court, and now is, guardian ad litem  
28 of plaintiff, John G. Hagins, Jr., a minor.

# EXHIBIT 2

# PVE promises open beaches, Bay Boy pays surfers \$15,000

by Daniel Blackburn

A \$15,000 cash settlement will be paid to five surfers by one of the so-called Lunada Bay Boys in what may prove to be the conclusion of an enduring surfing territory war on the Palos Verdes Peninsula.

Geoff Hagens of Torrance also won a permanent restraining order preventing alleged Bay Boy Peter McCullom from "annoying, harassing or intimidating" others trying to surf at the beach.

Hagens said after the settlement confirmed that McCullom "was the only one who owned up to what he had done." Other surfers had been accused of participating in the harassment, but the settlement specified only McCullom.

Out-of-area surfers long have maintained that they are regularly harassed by local surfers when they try to recreate at Laduna Bay. Incidents of fights and slashed automobile tires have been reported.

As part of last week's settlement agreement, city officials of Palos Verdes Estates agreed to issue a public statement "denouncing localism" at all city beaches.

The settlement calls for the city council to review the statement, though Palos Verdes Estates Deputy City Clerk Robin Ford said Tuesday that she is "not aware" of a city council agenda item relating to the settlement. The next PVE city council meeting is Dec. 10.

Hagens and his four fellow surfers originally sued the city for \$7 million, claiming police were negligent in enforcement of sanctions against the Bay Boys even after numerous complaints.

Palos Verdes Estates city officials were not commenting on the settlement. This

Wednesday adamantly denying laxity in the department's equal enforcement of the law.

"Our police department feels we have always enforced all applicable laws without regard for where people live, and we have gone out of our way to promote that image of equal enforcement."

The statement said it is "important that if anyone is a victim of crime or any activity up to person to bring it to our attention."

Hagens said in the settlement aftermath that "money was never the issue."

"What we wanted was a commitment from the city that they will make all Palos Verdes beaches available for everyone. Any incidents of localism at Lunada will be acted on immediately. That's a change, as far as I'm concerned, from their previous position," Hagens said.

He noted the city "has always denied the problem existed, but now they are

saying that if there is a problem they will act on it. I'm satisfied they will."

Hagens promised he "will be back in court if this doesn't change," but suggested "people will be encouraged by the city to use its beaches."

Hagens said the city "fought the issue like they've never fought before, like they had something to lose."

The successful surfer said he thinks the message has been delivered, that the beaches at Palos Verdes Estates cannot be dominated by locals.

"McCullom's demeanor has been an act of contrition," Hagens said.

MCCullom's lawyer, Dan Dunbar, was quoted following the settlement hearing as saying, "The bottom line is my guy feels bad about what he did. I don't think

# EXHIBIT 3

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4

5 Attorney for plaintiff, Timothy Banas

6

7

8 SUPERIOR COURT OF CALIFORNIA

9 COUNTY OF LOS ANGELES

10

11 TIMOTHY BANAS, ) CASE NO. BC268737  
12 Plaintiff, )  
13 vs. ) COMPLAINT FOR:  
14 CITY OF PALOS VERDES ESTATES; )  
CHRISTOPHER L. MILLICAN; )  
15 AARON K. ROURKE; DAVID A. )  
DICKEY; ROBERT C. JOHNSTON; )  
16 PAUL J. HAMILTON; NICHOLAS M. )  
SINCLAIR; NICHOLAS J. )  
17 MODISSETTE; DIRTY UNDERWEAR )  
GANG; DOES 1 THROUGH 300, )  
18 INCLUSIVE, )  
19 Defendants. )  
20

21

Plaintiff alleges:

22 1. The plaintiff, Timothy Banas, is, and at all times herein  
23 mentioned was, an individual and a resident of the County of Los  
24 Angeles, State of California.

25 2. The defendant, City of Palos Verdes Estates, is, and at all  
26 times herein mentioned was, a public entity.

27 3. Plaintiff is informed and believes and based upon such  
28 information and belief alleges that defendant, Christopher L.

1 Millican, is an individual and a resident of the City of Palos Verdes  
2 Estates, County of Los Angeles, State of California.

3 4. Plaintiff is informed and believes and based upon such  
4 information and belief alleges that defendant, Aaron K. Rourke, is an  
5 individual and a resident of the City of Palos Verdes Estates, County  
6 of Los Angeles, State of California.

7 5. Plaintiff is informed and believes and based upon such  
8 information and belief alleges that defendant, David A. Dickey, is an  
9 individual and a resident of the City of Palos Verdes Estates, County  
10 of Los Angeles, State of California.

11 6. Plaintiff is informed and believes and based upon such  
12 information and belief alleges that defendant, Robert C. Johnston, is an  
13 individual and a resident of the City of Palos Verdes Estates, County  
14 of Los Angeles, State of California.

15 7. Plaintiff is informed and believes and based upon such  
16 information and belief alleges that defendant, Paul J. Hamilton, is an  
17 individual and a resident of the City of Rancho Palos Verdes, County  
18 of Los Angeles, State of California.

19 8. Plaintiff is informed and believes and based upon such  
20 information and belief alleges that defendant, Nicholas M. Sinclair,  
21 is an individual and a resident of the City of Palos Verdes Estates,  
22 County of Los Angeles, State of California.

23 9. Plaintiff is informed and believes and based upon such  
24 information and belief alleges that defendant, Nicholas J. Modisette,  
25 is an individual and a resident of the City of Palos Verdes Estates,  
26 County of Los Angeles, State of California.

27 10. Plaintiff does not know the true names or capacities,  
28 whether individual, corporate, associate or otherwise, of DOES 1

1 THROUGH 300, INCLUSIVE, and therefore sues them pursuant to Code of  
2 Civil Procedure § 474. Plaintiff is informed and believes and based  
3 upon such information and belief alleges that each defendant  
4 designated herein as a DOE is legally responsible or liable for the  
5 acts and occurrences alleged herein, and is responsible for  
6 plaintiff's damages and injuries.

7 11. Plaintiff is informed and believes and based upon such  
8 information and belief alleges that, at all times mentioned in this  
9 complaint, each defendant was the agent, servant, and/or employee of  
10 each of the other co-defendants and was acting with each defendants'  
11 authorization, knowledge and/or consent. Plaintiffs are further  
12 informed that each defendant ratified the conduct of each of the  
13 remaining defendants (including any corporate defendants who ratified  
14 its/their agent(s) conduct through an officer or managing agent).

15 **FIRST CAUSE OF ACTION FOR ASSAULT AND BATTERY**

16 (Against defendants, Christopher L. Millican, Aaron K. Rourke, David  
17 A. Dickey, Robert C. Johnston, Paul J. Hamilton, Nicholas M. Sinclair,  
18 Nicholas J. Modisette, and DOES 1 THROUGH 50, INCLUSIVE, only)

19 12. Plaintiff realleges paragraphs 1 through 11 and incorporates  
20 the same herein by reference as though set forth herein at length.

21 13. On or about January 4, 2002, plaintiff went to surf at a  
22 popular place commonly known as "Indicator" which is located below the  
23 approximately 1400-1800 block of Paseo Del Mar in the City of Palos  
24 Verdes Estates.

25 14. To get down to the water from Paseo Del Mar, it is necessary  
26 to go down a steep trail. Plaintiff, while at the top of the trail  
27 was confronted by defendant Robert C. Johnston, among other members of  
28 the Dirty Underwear Gang (described hereinbelow) who told him to

1 leave. Plaintiff ignored Robert C. Johnston and continued down the  
2 trail towards the water. Mr. Johnston then yelled down to cohorts at  
3 the bottom of the trail something to the effect, "Kook coming down"  
4 and threw rocks at plaintiff.

5 15. At the bottom of the trail, plaintiff was confronted by  
6 defendant Christopher L. Millican who told plaintiff he did not belong  
7 there. Defendants, and each of them, abruptly began to kick and punch  
8 plaintiff his face, head, middle and extremities.

9 16. By reason of the acts of defendants, and each of them,  
10 plaintiff was placed in great fear for his life and physical well  
11 being.

12 17. As a result of the acts of defendants, and each of them,  
13 plaintiff has suffered extreme and severe mental anguish and physical  
14 pain and has been injured in mind and body all to plaintiff's damage  
15 in an amount according to proof.

16 18. As a result of the acts of defendants, and each of them,  
17 plaintiff was required to, and did, incur obligations for medical and  
18 related services reasonably required in the treatment and relief of  
19 the injuries suffered by plaintiff all to plaintiff's damage in an  
20 amount according to proof.

21 19. Defendants' conduct was willful, malicious, oppressive  
22 and/or fraudulent thereby justifying an award of punitive damages.

23 20. As a result of the acts of defendants, and each of them,  
24 plaintiff suffered loss of earnings and loss of earning capacity in an  
25 amount according to proof.

26 **SECOND CAUSE OF ACTION FOR CONSPIRACY**

27 (Against defendants, Christopher L. Millican, Aaron K. Rourke, David  
28 A. Dickey, Robert C. Johnston, Paul J. Hamilton, Nicholas M. Sinclair,  
Nicholas J. Modisette, and DOES 1 THROUGH 100, INCLUSIVE, only)

1       21. Plaintiff realleges paragraphs 1 through 20 and incorporates  
2 the same herein by reference as though set forth herein at length.

3       22. Sometime prior to January 4, 2002, defendants, and DOES 1  
4 THROUGH 100, knowingly and willfully conspired and agreed among  
5 themselves to intimidate, harass, threaten and assault and batter  
6 anybody who was not in the defendants' gang (known as, among other  
7 names, "The Dirty Underwear Gang") who attempted to surf at locations  
8 known as "Haggerty's", "The Cove", "Indicator" and "Lunada Bay"; to  
9 claim the above locations as their own, as if the defendants' owned  
10 public lands; and to disallow members of the general public to access  
11 beaches, trails and surfing locations around Palos Verdes Estates.

12       23. Plaintiff is informed and believes and thereupon alleges  
13 that the last overt act in pursuance of the above-described conspiracy  
14 occurred on January 4, 2002, and on other various dates between  
15 January 4, 2002, and continuing to the present, by virtue of the  
16 following acts:

17       A. The defendants, and DOES 1 THROUGH 50, threw rocks at  
18 plaintiff, made terrorist threats to plaintiff, and assaulted and  
19 battered plaintiff; and

20       B. DOES 85 to 100, INCLUSIVE, members of the Palos Verdes  
21 Estates Police Department, attempted to intimidate plaintiff into not  
22 pressing charges against their co-defendants, filled out police or  
23 investigative reports in a way which favored the co-defendants, and  
24 initiated false criminal charges against plaintiff's son, Thomas  
25 Banas, for coming to the defense of his father when plaintiff was  
26 being assaulted and battered by the defendants as alleged in  
27 paragraphs 13-15 above.

28       24. Prior to January 4, 2002, defendants, and DOES 1 THROUGH 100  
(hereinafter referred to in this paragraph as "gang"), vandalized

1 cars belonging to anyone who dared to park at one of the gang's  
2 surfing spots, threatened and threw rocks at non-gang affiliated  
3 surfers if they did not leave the gang's surfing spots, and assaulted  
4 and battered non-gang affiliated surfers.

5 25. As a result of the above-described conspiracy, plaintiff has  
6 suffered the damages as alleged in paragraphs 17 through 20 above and  
7 as more fully set forth in plaintiff's prayer below.

8 **THIRD CAUSE OF ACTION FOR CIVIL RIGHTS VIOLATION**

9 (Against City of Palos Verdes Estates, and DOES 75 THROUGH 100,  
10 INCLUSIVE)

11 26. This cause of action is an action brought under 42 U.S.C. §  
12 1983 to recover damages against defendants for violation of  
13 plaintiff's constitutional rights, (1) to peaceably assemble and  
14 transport himself to and from and on public property, (2) to liberty,  
15 (3) to equal protection of the laws, (4) to speak freely and to use  
16 that speech to seek legal redress, and (5) to surf.

17 27. Plaintiff realleges paragraphs 1 through 20 and incorporates  
18 the same herein by reference as thought set forth herein at length.

19 28. Defendants, DOES 75 THROUGH 100, INCLUSIVE, were at all  
20 times mentioned in this cause of action, agents for the City of Palos  
21 Verdes Estates and employed as police officers.

22 29. Defendants, DOES 75 THROUGH 100, INCLUSIVE, were at all  
23 times mentioned in this cause of action, acting in the course and  
24 scope of his/her employment with the City of Palos Verdes Estates.

25 30. Defendants, DOES 85 THROUGH 100, INCLUSIVE, are sued in  
26 their individual capacities.

27 31. For literally decades, generations of a surfer gang in  
28 Palos Verdes Estates have engaged in terrorist like activities which  
included making terrorist threats, throwing rocks, assaults, beating

1 people up, and vandalizing automobiles and other personal property.  
2 The terrorist activities were directed towards any person who  
3 attempted to surf at popular surf locations in Palos Verdes Estates  
4 known as "Indicator", Lunada Bay, "The Cove" and "Haggerty's" and who  
5 were not members of the gang (known by many names but which the  
6 plaintiff is presently informed is "The Dirty Underwear Gang").  
7 Plaintiff is informed that the gang is comprised of financially well  
8 to do residents of Palos Verdes Estates and Rancho Palos Verdes,  
9 and/or their children.

10 32. The activities of The Dirty Underwear Gang culminated in the  
11 assault and battery of plaintiff as described in paragraphs 13-15  
12 above. But for the Palos Verdes Police Department's aid to the gang,  
13 and a custom, practice and policy of either "looking the other way" or  
14 intimidating victims not to press charges against members of the surf  
15 gang, the assault and battery on plaintiff would not have occurred.

16 33. At all times mentioned in this cause of action, defendants  
17 were acting under color of state law.

18 34. As mentioned above, the Palos Verdes Estates Police  
19 Department has a custom and practice of ignoring complaints made to it  
20 by victims of crime perpetrated by the Dirty Underwear Gang. In many  
21 cases, instead of its usual policy of callously disregarding crimes  
22 committed by the Dirty Underwear Gang, the Palos Verdes Estates Police  
23 Department threatened and intimidated victims not to press charges  
24 against members of the Dirty Underwear Gang. Indeed, many of the  
25 members of the Dirty Underwear Gang are friends with members of the  
26 police department. The Palos Verdes Police Department allows the  
27 Dirty Underwear Gang to use and claim the surfing locations described  
28 herein as their own property and allows the building of non-permitted  
buildings, shacks, concrete changing areas and barbecue pits on public

land by the Dirty Underwear Gang for their sole use. The Palos Verdes Police Department, or at least a substantial number of its officers, view the Dirty Underwear Gang's activities as helpful to them in being "proactive" and keeping "undesirables" out of their city.

35. The custom and habit of members of the Palos Verdes Estates' Police Department to disregard complaints or to intimidate or coerce victims from making complaints, is so entrenched after so many years that it has become an official, albeit unwritten, policy of the Police Department, despite whatever good sounding written policies the police department has to the contrary.

36. In plaintiff's case, plaintiff attempted to lodge a criminal complaint against the defendants referred to in paragraphs 13-20 above but DOES 75 through 100 threatened him that he would be arrested, as would his son. In fact, plaintiff's son was thereafter charged with a crime in connection with defending his father from harm.

37. As a result of defendants' conduct, plaintiff has suffered the damages as alleged in paragraphs 17-20 above and as more fully set forth in plaintiff's prayer below.

38. The conduct of Defendants, DOES 85 THROUGH 100, was willful, malicious, and done with a reckless and callous disregard for plaintiff's federally protected rights.

39. Plaintiff is entitled to an award of attorney's fees pursuant to 42 U.S.C. § 1988.

FOURTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF

(Against defendants, Christopher L. Millican, Aaron K. Rourke, David A. Dickey, Robert C. Johnston, Paul J. Hamilton, Nicholas M. Sinclair, Nicholas J. Modisette, Dirty Underwear Gang, and DOES 1 THROUGH 300, INCLUSIVE)

40. Plaintiff realleges paragraphs 1 through 11 above and

1 incorporates the same herein by reference as though set forth herein  
2 at length.

3       41. The defendant DIRTY UNDERWEAR GANG is, and at all times  
4 herein mentioned, was, a partnership or association, form unknown,  
5 that fits the description of "criminal street gang" as referred to in  
6 the California Street Terrorism Enforcement and Prevention Act  
7 starting at Penal Code § 186.21.

8       42. Defendants, and DOES 1 THROUGH 300, INCLUSIVE, are members  
9 of the DIRTY UNDERWEAR GANG.

10       43. The defendants, and each of them, are engaged in a "pattern  
11 of criminal gang activity" as that phrase is defined in Penal Code §  
12 186.22 (e).

13       44. Penal Code § 186.22a provides that every building or place  
14 used by members of a criminal street gang for the purpose of the  
15 commission of the offenses which comprise a "pattern of criminal gang  
16 activity" is a nuisance which shall be enjoined, abated and prevented.

17       45. The surf locations known as "Haggerty's", "The  
18 Cove", "Indicator" and Lunada Bay are places used by defendants for the  
19 purpose of committing their pattern of criminal gang activity.

20       46. Plaintiff requests that Christopher L. Millican, Aaron K.  
21 Rourke, David A. Dickey, Robert C. Johnston, Paul J. Hamilton,  
22 Nicholas M. Sinclair, Nicholas J. Modisette, Dirty Underwear Gang, and  
23 DOES 1 THROUGH 300, INCLUSIVE, be permanently enjoined from using the  
24 surf locations known as "Haggerty's", "The Cove", "Indicator" and  
25 Lunada Bay.

26       47. Plaintiff's action benefits the public at large and  
27 plaintiff is entitled to an award of attorney's fees pursuant to  
28 statute.

WHEREFORE, plaintiff prays for judgment as follows:

## ON THE FIRST AND SECOND CAUSES OF ACTION

1. For general damages according to proof;

2. For damages for medical and related expenses in an amount according to proof;

3. For damages representing loss of earnings and loss of earning capacity in an amount according to proof;

4. For punitive damages in an amount according to proof;

ON THE THIRD CAUSE OF ACTION

5. For general damages according to proof;

6. For damages for medical and related expenses in an amount according to proof;

7. For damages representing loss of earnings and loss of earning capacity in an amount according to proof;

14       8. As to DOES 85 THROUGH 100 only, punitive damages in an amount  
15 according to proof;

16       9. For attorney's fees pursuant to statute in an amount  
17 according to proof;

ON THE FOURTH CAUSE OF ACTION

19       10. For a permanent injunction enjoining Christopher L.  
20 Millican, Aaron K. Rourke, David A. Dickey, Robert C. Johnston, Paul  
21 J. Hamilton, Nicholas M. Sinclair, Nicholas J. Modisette, Dirty  
22 Underwear Gang, and DOES 1 THROUGH 300, INCLUSIVE, from using the surf  
23 locations known as "Haggerty's", "The Cove", "Indicator" and Lunada Bay  
24 and from continuing their pattern of criminal gang activity;

25        11. For attorney's fees pursuant to the Attorney General  
26 statute;

ALL CAUSES OF ACTION

28 12. For costs of suit herein incurred; and

13. For such other and further relief as the Court may deem just

1 and proper.

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3 Dated: February 25, 2002

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5 Michael F. Sisson, Attorney for  
6 Plaintiff, Timothy Banas

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